



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Timothy R. SPOONER et al. GROUP: 2826
SERIAL NO: 10/006,964 EXAMINER: T. Dickey
FILED: December 5, 2001

FOR: METHOD AND DEVICE FOR PROTECTING MICRO
ELECTROMECHANICAL SYSTEMS STRUCTURES DURING
DICING OF A WAFER

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

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PETITION UNDER 37 C.F.R. 1.181

OFFICE OF PETITIONS

The Applicants respectfully requested that the Honorable Commissioner of Patents invoke his supervisory authority under 37 C.F.R. 1.181 and instruct the Examiner to refrain from issuing any further restriction or election of species requirements and to immediately examine the above-identified application on its merits so that a proper Office Action came be issued therefrom.

STATEMENT OF FACTS

1. On August 20, 2002, the Examiner issued an Office Action subjecting claims 1-145 to a twenty-way election of species requirement based upon the Summary Section of the above-identified application.

2. On November 4, 2002, the Applicants responded to the election of species requirement and elected, with traverse, claims 1-80, 122-130, and 137-139. Moreover, the Applicants argued that the Examiner failed to set forth proper grounds to maintain an election of species requirement.

3. On December 31, 2002, the Examiner issued a second Office Action, withdrawing the twenty-way election of species requirement dated August 20, 2002, and subjecting claims 1-145 to a seven-way election of species requirement based upon the various Figures of the above-identified application.

4. On February 20, 2003, the Applicants responded to the election of species requirement and elected, with traverse, claims 1-145, as all these claims read upon the alleged fourth species of Figures 18-25. Moreover, the Applicants argued that the Examiner failed to set forth proper grounds to maintain an election of species requirement.

5. On May 1, 2003, the Examiner issued a third Office Action, withdrawing the seven-way election of species requirement dated December 31, 2002, and subjecting claims 1-145 to a three-way restriction requirement. In this Office Action, the Examiner asserts that the invention of Group III is not distinct from the invention of Group I and thus the Examiner would examine the inventions of Groups I and III together, if the Applicants so elect. The Examiner further asserts that the invention of Group III is not distinct from the invention of Group II and thus the Examiner would examine the inventions of Groups II and III together, if the Applicants so elect.

6. Various attempts had been made, between May 5, 2003 and the filing date of this petition to contact the Examiner's Supervisor to resolve this issue.

7. Filed concurrently with this Petition, the Applicants have responded to the Office Action of May 1, 2003, by electing, with traverse, the claims associated with Group III.

REMARKS

Claims 1-145 are pending in the present application.

The Examiner has to date issued three separate Office Actions wherein the Examiner has attempted to subject the pending claims to either an election of species or restriction requirement. Moreover, as is clear from the record, the Examiner has failed, in each instance, to establish a prima facie case to support either an election of species or restriction requirement.

It is noted that each of these Office Actions has caused the Applicants to accrue unnecessary costs to address non-sustainable positions by the Examiner. Notwithstanding the accrual of these costs, the Applicants have not received an examination of the Applicants' application upon its merits.

It is the Applicants' position that the Applicants should not have to accrue any further unnecessary costs in addressing the Examiner's failed and unsustainable attempts to establish a prima facie case to support either an election of species or restriction requirement.

Furthermore, it is the Applicants' position that the Applicants should have received a proper examination of the Applicants' application upon its merits by the third Office Action.

Therefore, in view of the Examiner's repeated failure to establish an election of species or restriction requirement, and the Examiner's failure to provide a proper examination of the Applicants' application upon its merits by the third Office Action, the Applicants are respectfully requesting that the Honorable Commissioner invoke his supervisory authority under 37 C.F.R. 1.181 and instruct the Examiner to refrain from issuing any further restriction or election of species requirements and to immediately examine all the claims in the above-identified application on their merits so that a proper Office Action came be issued therefrom.

Enclosed is a check for \$130 to cover the petition fee.

Respectfully submitted,



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